

BRB No. 05-0961 BLA

BETTIE J. HANNAH )  
(Widow of WAYNE M. HANNAH) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 JIM WALTER RESOURCES, ) DATE ISSUED: 07/28/2006  
 INCORPORATED )  
 )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John M. Vittone,  
Chief Administrative Law Judge, United States Department of Labor.

Patrick K. Nakamura (Nakamura, Quinn & Walls LLP), Birmingham,  
Alabama, for claimant.

Thomas J. Skinner (Lloyd, Gray & Whitehead, P.C.), Birmingham,  
Alabama, for employer.

Before: SMITH, McGRANERY, and BOGGS, Administrative Appeals  
Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (04-BLA-6536) of  
Chief Administrative Law Judge John M. Vittone on a survivor's claim filed pursuant to  
the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as  
amended, 30 U.S.C. §901 *et seq.* (the Act). Claimant filed her survivor's claim for  
benefits on May 3, 2002. The district director denied benefits on January 10, 2003.  
Director's Exhibits 2, 14. On January 12, 2004, claimant filed a request for modification  
and submitted additional medical evidence. Director's Exhibit 15. On May 26, 2004, the  
district director issued a Proposed Decision and Order denying claimant's request for

modification. Director's Exhibit 21. Claimant subsequently requested a hearing, which was held on July 7, 2004 before the administrative law judge. In his Decision and Order dated August 4, 2005, the administrative law judge found that the weight of the medical evidence established that the miner suffered from coal workers' pneumoconiosis, and that his death was due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding at 20 C.F.R. §718.205(c).<sup>1</sup> Employer argues that the administrative law judge failed to properly consider the opinions of Drs. Friedlander and Fino, relevant to the location of the coal dust macules found in the miner's lungs, and whether pneumoconiosis hastened the miner's death. Claimant responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments on appeal, and the evidence of record, we affirm the administrative law judge's determination that the miner's death was hastened by pneumoconiosis. We specifically reject employer's assertion that the administrative law judge erred in the weight he accorded employer's experts relevant to the cause of the miner's death.

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment, and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Under Section 718.205(c)(2),

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<sup>1</sup> We affirm as unchallenged on appeal the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2),(4). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 15.

<sup>2</sup> Since the miner's last coal mine employment took place in Alabama, this case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. Claimant may establish that pneumoconiosis was a substantially contributing cause of a miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5).

In this case, the administrative law judge noted that the autopsy report completed by Dr. Maisel on January 3, 2002, identified the miner's lungs as showing evidence of extensive usual interstitial pneumonia (UIP) with areas of honeycomb lung, extensive interstitial fibrosis along with areas of diffuse alveolar damage, extensive anthracosis, and multifocal atypical squamous cell carcinoma. Director's Exhibit 17. The administrative law judge properly concluded that the autopsy findings of anthracosis and pulmonary interstitial fibrosis were sufficient to establish the existence of pneumoconiosis as defined under the Act. *See* 20 C.F.R §718.201; Decision and Order at 13. He then turned his attention to the cause of the miner's death. In this regard, the administrative law judge noted that Dr. Copeland had treated the miner for ongoing respiratory symptoms related to interstitial changes seen in the miner's lungs from December 2001 until his death on January 3, 2002. The administrative law judge found that the record established Dr. Copeland's relationship and familiarity with the miner's pulmonary condition and overall health for many years prior to his death, and thus credited Dr. Copeland's opinion, following his review of the autopsy report, that coal dust exposure contributed to the miner's fatal lung condition and therefore contributed to his death. Decision and Order at 15. The administrative law judge further relied on the opinion of Dr. Cohen, a Board-certified pulmonary specialist, who reviewed the available medical evidence and opined that the miner's interstitial lung disease and pulmonary fibrosis were due to coal dust exposure, and that these conditions contributed to the miner's respiratory-related death.

On appeal, employer maintains that the administrative law judge failed to consider Dr. Friedlander's opinion that the coal macules and anthracotic pigmentation noted on biopsy and autopsy were not adjacent to the alveolar fibrosis, which caused the miner's fatal lung damage. Employer's Brief at 9. Employer further notes that Dr. Fino stressed that there were no coal macules present in the areas of severe pulmonary fibrosis that ultimately caused the miner's death. Employer asserts that the location of the coal macules serves to dispute Dr. Cohen's opinion that the miner's death was hastened by pneumoconiosis, and that the administrative law judge must properly consider this aspect of employer's evidence.

Contrary to employer's assertion, the administrative law judge set out in great detail in his Decision and Order the various arguments presented by Drs. Cohen and Friedlander as to whether or not coal dust exposure was a causative factor for claimant's diagnosed UIP or interstitial pulmonary fibrosis. The administrative law judge specifically noted that while Dr. Friedlander disagreed with Dr. Cohen's opinion that

claimant's lung disease was due to coal dust exposure, "Dr. Cohen responded to each of Dr. Friedlander's criticisms with specific answers supported by evidence and studies that were medically and logically sound." Decision and Order at 14. The administrative law judge permissibly determined that Dr. Friedlander's opinion was not sufficiently reasoned, noting that the doctor "did not explain why he believed [the miner's] significant exposure to coal dust and the deposits of macules in the lungs, albeit 'no larger than 5 mm across,' played no part, whatsoever, in [the miner's] death." *Id.* The administrative law judge also noted that Dr. Friedlander had qualified his opinion by stating at the beginning of his report that he was not overly confident in the correctness of his own opinion. *Id.* The administrative law judge had discretion to consider the qualified nature of Dr. Friedlander's opinion, noting the doctor's acknowledgement that:

There are still some questions about coal exposure (without silica) as a possible trigger of UIP through autoimmunity. While the weight of today's evidence is strongly and clearly against any true connection, it's just possible that ten years from now, new evidence could prove me wrong.

Director's Exhibit 18 at 1; *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); Decision and Order at 9, 14.

With respect to Dr. Fino, the administrative law judge similarly found that Dr. Fino's opinion lacked a credible rationale for his conclusion that coal dust exposure played no part, at all, in the miner's pulmonary process, particularly in light of the autopsy findings of extensive anthracosis and pulmonary fibrosis. Employer's Exhibit 1; Decision and Order at 16. The administrative law judge also properly noted that the opinions of Drs. Friedlander and Fino, relevant to the cause of the miner's death, were less probative since neither physician was of the opinion that the miner had clinical or legal pneumoconiosis. *See Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004) (Roth, J., dissenting); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986).

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986), and to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v Cannelton Industries, Inc.*, 12 BLR 1-190 (1989), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when his findings are rational and supported by substantial evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). The administrative law judge, in this instance, rationally considered the quality of the evidence in determining whether the conflicting medical opinions were supported by the underlying documentation and adequately explained. *See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Clark v. Karst-Robins Coal Co.*, 12 BLR 1-149 (1989)(*en*

*banc*). The administrative law judge permissibly assigned greatest probative weight to the opinion of Dr. Copeland, as he was the miner's treating physician, *see* 20 C.F.R. §718.104(d), and the opinion of Dr. Cohen, because it was better reasoned than the opinions of employer's experts, and Dr. Cohen had qualifications superior to those of the other physicians of record.<sup>3</sup> *See Clark*, 12 BLR at 1-149; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). As the administrative law judge properly rendered his credibility determinations in this case, we affirm as supported by substantial evidence, his finding that the miner's death was hastened by pneumoconiosis, and his award of benefits pursuant to 20 C.F.R. §718.205(c).

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge

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<sup>3</sup> The administrative law judge noted that "Dr. Friedlander, while board-certified in pathology, has had much less experience and publication than Dr. Cohen in the area of pulmonary disease and, specifically, in the area of coal workers' pneumoconiosis. This was made obvious by Dr. Friedlander's passing comment that cough was not a 'usual symptom' of pneumoconiosis." Decision and Order at 14. The administrative law judge further noted that the record did not reveal Dr. Fino's credentials. *Id.*